

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE: BABY FOOD PRODUCTS LIABILITY
LITIGATION

| Case No. 24-md-3101-JSC

MDL 3101

Hon. Jacqueline Scott Corley

This Document Relates to:

**JOINT STATEMENT FOR MARCH 27,
2025 CASE MANAGEMENT
CONFERENCE**

ALL ACTIONS

Date: March 27, 2025

Time: 9:00 a.m. PT

Location: Courtroom 8

19th Floor 450 Golden Gate Ave.
San Francisco, CA 94102

1 Plaintiffs and Defendants¹ respectfully submit this Case Management Conference Statement
 2 in advance of the March 27, 2025 Case Management Conference.

3 **I. Short Form Complaints**

4 On February 21, 2025, Plaintiffs submitted a final version of a proposed Short Form
 5 Complaint to be used by Plaintiffs in connection with the Long Form Master Complaint.
 6 Defendants object to portions of the Short Form Complaint. Pursuant to Pretrial Order No. 13
 7 (ECF No. 413), Defendants' objections have been fully briefed. *See* ECF Nos. 420, 426, and 431.
 8 The parties will be prepared to discuss this issue with the Court at the March CMC.

9 **II. Plaintiff Fact Sheets**

10 In compliance with PTO 12, the parties filed the Initial Plaintiff Fact Sheet on January 31,
 11 2025. *See* ECF No. 361. In compliance with PTO 13, the parties have selected a vendor for
 12 electronic submission.

13 ***Plaintiffs' Position:***

14 Plaintiffs propose that each Plaintiff filing a complaint after the Initial Plaintiff Fact Sheet
 15 is finalized by court order shall have **60 days** to serve a completed Initial Plaintiff Fact Sheet after
 16 filing of the Short Form Complaint.

17 ***Defendants' Position:***

18 Defendants propose that each Plaintiff filing a complaint after the Initial Plaintiff Fact
 19 Sheet is finalized by court order shall have **45 days** to serve a completed Initial Plaintiff Fact Sheet
 20 after filing of the Short Form Complaint. Defendants need the information in the Plaintiff Fact
 21 Sheets as soon as possible to ensure that critical evidence is preserved, including food and baby
 22 food purchasing records, medical records, and educational records.

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27 ¹ As used herein, "Defendants" includes only those defendants that have not been dismissed from
 the MDL.

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1 **III. General Causation Schedule**

2 ***Plaintiffs' Position:***

3 Plaintiffs renew their request for an extension to the general causation schedule. This MDL
 4 represents an effort that no prior case or court in this litigation has undertaken: analyzing testing
 5 data for hundreds of products across seven manufacturing Defendants on behalf of dozens of
 6 clients. Plaintiffs were optimistic that this undertaking would run seamlessly. But that has not been
 7 the case. Additionally, Plaintiffs' nutritionist, who is going to determine the hypothetical menus
 8 for general causation, recently and unexpectedly lost a close family member, which will impact
 9 her ability to render a timely report in this matter. Plaintiffs respectfully renew their request that
 10 the Court extend the general causation schedule four months to allow the parties time to present
 11 the most robust evidence available given the circumstances. This modest extension will allow
 12 Plaintiffs and their experts time to receive, ingest, and analyze the outstanding discovery while not
 13 prejudicing Defense.

14 Plaintiffs took the Court's recent guidance to heart and are attempting to work with
 15 Defendants to resolve outstanding discovery issues. Nevertheless, critical issues remain on both
 16 the discovery and data processing fronts. Some of these issues would benefit from having
 17 additional time to resolve. On other issues, Plaintiffs and certain Defendants have reached an
 18 agreement in principle but Plaintiffs have yet to receive the additional anticipated information
 19 from Defendants. The information, once received, will need to be assessed by Plaintiffs, ingested
 20 by Plaintiffs' data experts, and the revised data outputs analyzed by Plaintiffs' other experts.

21 For example, to date, neither Walmart nor any of its co-manufacturers have produced any
 22 pre-2017 product formulas. Walmart has agreed to help Plaintiffs obtain these formulas from its
 23 co-manufacturers, but hardly any have been produced yet. One co-manufacturer, Baxters, refuses
 24 to produce any pre-2019 testing documents. Baxters claims that the documents are stored off-site
 25 and are difficult to retrieve. However, without these documents, or at least a representative
 26 sampling of them, Plaintiffs experts will be required to opine about a likely non-representative
 27 data set. Additionally, and perhaps most importantly, Plaintiffs have only been able to collect
 28 finished product and/or ingredient testing that can be assigned to 53% of Appendix A Walmart

1 products despite diligent conferrals, follow-ups, and formal written requests.

2 In another example, Defendant Gerber has not produced any finished product testing for
3 eighteen products, more than ten percent of Gerber's Appendix A products. Similarly, Plaintiffs
4 have identified several years of missing product formulas. In other words, although Plaintiffs have
5 formulas covering certain years for a particular product, Plaintiffs are missing formulas that cover
6 the entire period that the product has been on the market. Plaintiffs are working with Gerber to
7 determine whether those missing formulas are due to production errors or because formulas for
8 one particular year also cover additional years. Plaintiffs hope to have that issue resolved in the
9 coming weeks.

10 Defendant Nurture's requirements about the confidentiality of its product formulas also
11 created delays. For example, Nurture produced its formula database in a manner that allows only a
12 limited number of attorneys and experts review the product formulas. These product formulas
13 were not OCR'd, meaning that to find specific information, the reviewer would need to read each
14 page rather than use a search function to find information quickly. Nor could the reviewer take
15 electronic notes regarding the formula contents. Compounding the problem, Plaintiffs recently
16 discovered the Nurture provided Plaintiffs access to only a subset of product formulas relevant to a
17 separate state court case, not the product formulas for all of the Appendix A products.
18 Additionally, Nurture's security requirements for accessing its formulas has impeded Plaintiffs'
19 experts' ability to do their work. Nurture, for example, has objected to the use of certain
20 processors and data extraction tools being applied to their formulas. Plaintiffs and Nurture are
21 working together to rectify these issues—specifically to create a secure third-party-hosted
22 environment for Plaintiffs' experts to extract Nurture's formula data, but no resolution has been
23 reached. Until a resolution is reached, Plaintiffs' data experts are unable to process Nurture's
24 formula data. And even when a resolution is reached, it will take time to set up this environment
25 and for Plaintiffs and their experts to extract, review, and assess the new information.

26 There is other outstanding discovery Plaintiffs anticipate receiving from each Defendant.
27 Plaintiffs are anticipating updated interrogatory responses from at least Hain, Beech-Nut, Nurture,
28 Plum, and Sprout. Plaintiffs anticipate receiving additional responses as to the ambiguous testing

1 from at least Hain, Beech-Nut, Nurture, and Sprout. For much of the outstanding discovery,
 2 Plaintiffs do not know when Defendants will provide it or in what form it will be provided. Once
 3 received, the information will need to be ingested by Plaintiffs' data experts and analyzed by
 4 Plaintiffs' exposure and other experts.

5 On the data processing front, Plaintiffs submit the declaration of Lacey Keller, Plaintiffs'
 6 Data Analyst. Ms. Keller is dedicated to working as quickly as possible, and she has dedicated
 7 hundreds of hours to her assignment so far. But ingesting the data and resolving the
 8 inconsistencies within the data have proven to be a more time-intensive endeavor than originally
 9 anticipated. *See* Keller Decl. at ¶¶12-17. Ms. Keller's declaration outlines the many issues that
 10 require more time to address within Defendants' produced data. That additional time will allow
 11 Ms. Keller and her team to sufficiently ingest and analyze the data such that it can be provided to
 12 Plaintiffs' other experts to interpret. But even then, additional time is required for those other
 13 experts to analyze the data from Ms. Keller in forming their opinions. *See* Jones Decl. at ¶¶ 15-16.
 14 Thus, Plaintiffs seek a reasonable adjustment to the schedule that will not prejudice Plaintiffs nor
 15 Defendants.

16 Plaintiffs request the Court extend the general causation schedule four months, as follows:

| | Current Date | New Date |
|--|---------------------|-------------------|
| Plaintiff Expert Reports | April 25, 2025 | August 22, 2025 |
| Defense Expert Reports | June 6, 2025 | October 3, 2025 |
| Plaintiff Rebuttal Expert Reports | June 20, 2025 | October 17, 2025 |
| Close of GC Discovery | August 22, 2025 | December 19, 2025 |
| Rule 702 Motions | September 19, 2025 | January 16, 2026 |
| Rule 702 Oppositions | October 24, 2025 | February 20, 2026 |
| Rule 702 Replies | November 7, 2025 | March 6, 2026 |
| Rule 702 Hearing | December 8, 2025 | April 6, 2026 |

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1 ***Defendants' Position:***

2 At the CMC on February 27, 2025, Plaintiffs requested a four-month extension of their
 3 deadline to serve expert reports and of the general causation schedule, including the Rule 702
 4 hearing dates that the Court carefully selected with the parties' input and agreement, based on
 5 unfounded accusations that Defendants had not complied with their discovery obligations. After a
 6 CMC during which the Court heard argument regarding several discovery "disputes" raised by
 7 Plaintiffs, many of which Plaintiffs raised for the first time in the joint CMC statement without any
 8 meet and confer efforts, the Court denied Plaintiffs' request to extend the general causation
 9 schedule.

10 Nothing has changed. Plaintiffs have had the information and documents they said they
 11 needed for general causation since at least October 2024. Indeed, it cannot reasonably be disputed
 12 that Plaintiffs have the information they need to serve general causation expert reports, because
 13 nearly two months ago, Plaintiffs' lead counsel here served six general causation expert reports
 14 (consisting of hundreds of pages) in the California state court litigation. None of those experts
 15 claimed they needed more test results or other information to render their opinions. Plaintiffs'
 16 request also comes only four months after they represented to the Court that an expert disclosure
 17 date in April 2025 was "just fine to us," and more than ten months after Plaintiffs boasted to this
 18 Court that they had "a full roster of experts. I have ***hundreds and hundreds of pages of [general***
 19 ***causation] expert reports ready to go.***" 11/07/24 Tr. at 29:17-18; 05/16/24 Tr. at 27:12-15.

20 The Court should deny Plaintiffs' second request for a four-month extension of the general
 21 causation schedule deadlines for the same reasons it denied Plaintiffs' first request; Plaintiffs already
 22 have all of the information they need to comply with the existing schedule. Since the February
 23 CMC, Defendants have continued to meet and confer with Plaintiffs regarding their requests for
 24 additional information. Despite objecting to the scope of Plaintiffs' discovery requests as exceeding
 25 what is necessary for and/or relevant to general causation, Defendants have attempted in good faith
 26 to provide Plaintiffs with the information they claim they need, including identifying products that
 27 correspond to overbroad lists of purportedly "ambiguous" test results. Defendants' compliance with
 28 their discovery obligations is confirmed by the simple fact that Plaintiffs have not filed a single

1 Letter Brief regarding a discovery dispute since the Court denied Plaintiffs' last two requests for
 2 relief (on almost every issue) in January 2025. *See* ECF Nos 312, 357. Plaintiffs have had
 3 Defendants' test results for over two years in the state court litigation, which test results (and more)
 4 Defendants re-produced in October 2024 in this MDL. Plaintiffs have not complained about
 5 deadlines for submitting general and specific causation expert reports in the state-court *N.C.* and
 6 *Landon R.* cases using the same test results and formulas they now claim are insufficient.

7 If the Court does not simply deny Plaintiffs' request, Defendants request an opportunity to
 8 fully brief the issue. Like last month, Plaintiffs again gave Defendants little notice regarding their
 9 requested extension, leaving Defendants an unreasonably short time to respond. The parties met
 10 and conferred regarding the March CMC Statement on Monday, March 17. Plaintiffs stated that
 11 they intended to request a four-*week* extension of their deadline to serve expert reports with no
 12 change to the December hearing date and did not preview the grounds for their request. Defendants
 13 provided Plaintiffs with a one-page CMC statement on Wednesday, March 19. Despite Defendants'
 14 requests that Plaintiffs provide their positions in a timely manner, Plaintiffs did not provide their
 15 initial statement to Defendants until Sunday, March 23, at which time Plaintiffs pivoted back to a
 16 four-*month* extension request and a complete overhaul of the Court's schedule. Plaintiffs then
 17 provided a revised statement to Defendants on Monday, March 24, at 1:19 p.m., that added new
 18 substantive arguments.

19 In addition, Plaintiffs provided essentially *no notice* of the two declarations they filed in
 20 support of their request for an extension. Plaintiffs did not provide the supporting declarations of
 21 their data analyst, Lacey Keller and their exposure expert, Dr. Rachael M. Jones, *until 10:39 a.m.*
 22 *on Tuesday, March 25, the same day the CMC statement was due at noon.* The Keller declaration
 23 is comprised of 17 paragraphs spanning 6 pages. The Jones declaration is comprised of 16
 24 paragraphs spanning 5 pages. Plaintiffs offer no explanation for sending two lengthy, substantive
 25 declarations a little more than an hour before the filing deadline, thereby depriving Defendants of
 26 an opportunity to respond before the filing deadline. Defendants will do their best to respond to the
 27 declarations, but it is not clear they can do so in advance of the CMC and therefore the Court should
 28 decline to consider Plaintiffs' supporting declarations.

1 Plaintiffs raise two general discovery issues in support of their second request for a four-
2 month extension. Plaintiffs state they expect to receive additional discovery from certain
3 Defendants (e.g., supplemental interrogatory responses and responses to Plaintiffs' inquiries
4 regarding "ambiguous" test results), but "Plaintiffs do not know when Defendants will provide it or
5 in what form it will be provided." Plaintiffs' statements lack specificity and are too general for
6 Defendants to respond with any precision. They are also not accurate. For example, certain
7 Defendants that intend to serve supplemental interrogatory responses have already provided
8 Plaintiffs with the information that will be included in those responses, or at least previewed the
9 type of information they will provide. In the context of Plaintiffs' inquiries regarding "ambiguous"
10 test results, Defendants have explained to Plaintiffs whenever possible why Defendants' test results
11 are not in fact ambiguous and how Plaintiffs can resolve their confusion based on the information
12 already provided to them. Defendants also generally told Plaintiffs when they can expect responses
13 from Defendants to Plaintiffs' inquiries. And with respect to one Defendant, the parties agreed in
14 concept to a stipulation that would globally address outstanding "ambiguous" test results on March
15 13, 2025. Plaintiffs requested to draft the stipulation, but have still not circulated a draft nearly two
16 weeks after offering to do so.

17 Put simply, over the past few months, Plaintiffs have continuously raised new and different
18 issues with each Defendant. Despite Defendants' objections to the scope and relevance of Plaintiffs'
19 inquiries, Defendants have met and conferred in good faith and provided information where
20 appropriate to Plaintiffs promptly and efficiently. If Plaintiffs had any genuine disputes regarding
21 the scope or timing of discovery, they should have filed letter briefs months ago. That Plaintiffs
22 only raise these discovery issues in CMC statements (or shortly before the deadline to file CMC
23 statements) demonstrates that they are not genuine disputes, but rather were manufactured as support
24 for Plaintiffs' requests for extensions to the general causation schedule.

25 Plaintiffs also raise specific discovery issues as to three Defendants in their statement. As
26 demonstrated below, none of these issues warrants a change to the general causation schedule.

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1 **A. Walmart**

2 Plaintiffs state that Walmart's pre-2017 formulations have not been produced. Plaintiffs
 3 neglect to inform the Court, however, that these formulations have not been produced because
 4 neither Walmart nor the relevant co-manufacturers (all of whom have been subpoenaed) possess
 5 responsive formulations going back that far. For instance, during the parties' meet-and-confer on
 6 March 21, 2025, Plaintiffs confirmed that there were only two co-manufacturers Plaintiffs were
 7 waiting to hear from regarding the production of pre-2017 formulations. One co-manufacturer has
 8 since confirmed that it has performed a diligent search and has not been able to locate any responsive
 9 formulations. Baxters anticipates producing the responsive formulations it has been able to locate
 10 this week. Thus, all pre-2017 formulations, to the extent they exist and can be located, will be
 11 produced this week and cannot be the basis of Plaintiffs' proposed request to delay the Court's
 12 schedule.

13 Similarly, Plaintiffs complain about the volume of test results related to Walmart's private
 14 label products. But again, Plaintiffs have already subpoenaed *all* Walmart co-manufacturers who
 15 supplied the relevant products and even several ingredient suppliers of such co-manufacturers.
 16 Walmart, Walmart's co-manufacturers, and ingredient suppliers have produced the test results they
 17 were able to locate; there is nothing left to produce. Indeed, Baxters is the *only* co-manufacturer
 18 who may have any additional test results to produce, has spent weeks locating a representative
 19 sampling of test results, and is producing the sampling this week. Plaintiffs' position that this
 20 Court's schedule should be upended so Plaintiffs can file a motion to compel a single co-
 21 manufacturer to search off-site warehouses in the off chance it can find pre-2019 test results to
 22 supplement the testing it already produced for such products is meritless. Indeed, Plaintiffs already
 23 had approximately four months to compel Baxters to comply with Plaintiffs' subpoena if they
 24 believed it was necessary for general causation and chose not to do so.

25 **B. Gerber**

26 Plaintiffs' statement that they are "missing" test results for 18 Gerber products does not
 27 support Plaintiffs' requested extension and is in any event inaccurate. Gerber produced its test
 28 results on October 31, 2024 (most of which had been produced to the same counsel in other litigation

1 in 2022 and 2023). Plaintiffs waited nearly five months until March 14, 2025, to inquire about test
2 results for the 18 products referenced in Plaintiffs' statement. Having waited that long, Plaintiffs
3 cannot not use this delay as a basis for an extension.

4 Plaintiffs' assertion is also incorrect. Gerber has already produced test results for at least 11
5 of the 18 products Plaintiffs reference. Gerber has also located and will produce no later than next
6 week test results for at least 5 additional products. Thus, Plaintiffs either already have, or will soon
7 have, test results for at least 16 of the 18 products. Having only received Plaintiffs' inquiry a few
8 days ago, Gerber will attempt to locate test results for the 2 remaining products and expects it will
9 be able to do so. However, even if there are two products for which Plaintiffs do not have finished
10 product test results, that still would not support Plaintiffs' request to extend the general causation
11 schedule. Gerber has already produced over 6,000 finished product test results for 139 of the 141
12 Gerber baby food products identified in Appendix A to the Master Complaint as well as over 18,000
13 ingredient test results. Plaintiffs already have what they need and offer no explanation how missing
14 test results for only two products would meaningfully impact general causation, much less warrant
15 a four-month extension.

16 Similarly, Plaintiffs' contention that "Plaintiffs are missing formulas that cover the entire
17 period that the product has been on the market" also does not support their request to extend the
18 general causation schedule. First, Plaintiffs offer no explanation why the formulas Gerber has
19 already produced for its products are insufficient for general causation – i.e., why Plaintiffs need
20 formulas for every year each product was sold. Second, Plaintiffs offer no explanation for their
21 delay in raising this issue. Gerber produced most of its formulas in 2022 and 2023, and more on
22 October 31, 2024. Nearly four months later, on February 23, 2025 (shortly before the February
23 CMC Statement was filed), Plaintiffs sent Gerber a letter purporting to identify dozens of "missing"
24 formulas. Gerber subsequently explained to Plaintiffs that their letter was inaccurate in several
25 respects and, most importantly, missed formulas Gerber had already produced. On a meet and
26 confer call on March 7, 2025, Plaintiffs **conceded** that their letter was inaccurate and stated that they
27 would send a new, narrower letter identifying a handful of formulas they claim are actually
28 "missing." Plaintiffs still have not sent any such letter. In sum, neither of the two issues Plaintiffs

raise regarding Gerber supports Plaintiffs' requested relief.

C. Nurture

Even if Nurture's formulas were somehow relevant, Nurture has long made the formulas available to Plaintiffs in a usable format. As agreed in underlying litigations, Nurture produced most of the formulas at issue in this case over two years ago into a secure database. Nurture produced a limited number of additional formulas in November 2024. Lead counsel, Brent Wisner, and multiple of his colleagues have had access to these formulas since that time and have been using them, without incident, to prepare expert reports.

9 Plaintiffs' counsel raised no concern about Nurture's formula production until February 21,
10 2025, when they notified Nurture that they did not have access to formulas Nurture had, in fact,
11 produced. After review, Nurture confirmed that the missing formulas were produced in an early
12 state court case and existed in an MDL formula database, to which Plaintiffs never requested access
13 or provided a confidentiality order acknowledgment. Upon receipt of the acknowledgment, Nurture
14 promptly provided access to these formulas. Plaintiffs are also incorrect that only one person has
15 access to these formulas. There are five individuals who have access: Pedram Esfandiary, Brent
16 Wisner, Mayra Maturana, Jeremy Johnson, and Madeline Clavier.

With respect to the format of the production, despite having Nurture formulas for many months or even years, it was only earlier this month that Plaintiffs asked for the formulas in Native format. Nurture agreed and has been working diligently with the Plaintiffs to develop a working solution to import the Native formulas, which will both meet Plaintiffs' needs and honors the agreed-upon Protective Order.

22 | Dated: March 25, 2025

Respectfully submitted,

WAGSTAFF LAW FIRM

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13

14 Dated: March 25, 2025
15

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25

26 *Defendants' Liaison Counsel*
27

28

1 **ATTESTATION OF CONCURRENCE IN FILING**

2 In accordance with Northern District of California Local Rule 5-1(i)(3), I attest that
3 concurrence in the filing of this document has been obtained from each of the signatories who are
4 listed on the signature page.

5

6 Dated: March 25, 2025

/s/ Brooke Killian Kim

7 Brooke Killian Kim

8 *Defendants' Liaison Counsel*

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1 **CERTIFICATE OF SERVICE**

2 I certify that on March 25, 2025, I electronically filed the foregoing Joint Statement with
3 the Clerk of the Court using the ECF system, which sent notification of such filing to all counsel
4 of record.

5
6 _____
7 */s/ Brooke Killian Kim*
8 Brooke Killian Kim
9 *Defendants' Liaison Counsel*

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